

## **Remarks**

### **Support for the claims as amended**

Claims 1-4 are method claims. Applicants have amended their claims to specify that the steps of their method are “performed in [an] intermediary using [a] processor [and a storage device to which the processor has access]”. (claim 1, preamble). The amendment is fully supported at least by server 14 in FIGs. 1 and 7. Applicants have additionally simplified claim 1 by merging the steps of lines 19-23 of claim 1 into a single step. As Examiner will immediately see, the simplification raises no issues of support.

### **The rejection under 35 U.S.C. 101**

As presently amended, the claims are now tied to a “particular apparatus”, namely the processor and the storage device to which the processor has access, and consequently should pass muster under the current USPTO guidelines for method claims.

### **Traversal of the rejections under 35 U.S.C. 103**

#### *What Applicants are claiming*

A central characteristic of Applicants’ “method of providing continuing medical education credit to a first physician for a consultation between the first physician and a second physician” is the role of the intermediary. As set forth in claim 1, the intermediary does the following:

- receiving a request for a consultation from the first physician via the telecommunications system and storing the request in the storage device;

- receiving a selection made by a staff physician in the intermediary of the second physician, the second physician having an expertise in a specialty in which the consultation is requested by the first physician;

- sending the stored request to the selected second physician via the telecommunications system;

- receiving a comment made with regard to the consultation via the telecommunications system from the selected second physician and storing the comment;

- providing the stored comment from the selected second physician to the first physician via the telecommunications system;

- on conclusion of the consultation, recording information concerning the consultation in a continuing medical education database

accessible to the processor, the information being associated with the first physician; and

creating an accreditation report for the first physician from the information in the continuing medical education database, the accreditation report comprising a certification of the continuing medical education credit earned by the first physician from participation in the consultation.

As may be seen from the foregoing, the intermediary receives the consultation request, selects the physician to be consulted, sends the request to the selected physician, receives a comment made by the selected physician, provides the comment to the first physician, stores information concerning the consultation, and uses the information to make an accreditation report which certifies that the first physician has earned a CME credit by participating in the consultation.

*What the references disclose*

The combined references simply do not disclose the kind of involvement of the intermediary in providing continuing medical education which is set forth in claim 1. Fontelo simply employs the Web to make instructional materials which have been designated by the USUHS for CME credit. (page 141, paragraph 3). Additionally, the physicians can use the USUHS' Web site as a "forum for exchanging diagnostic opinions on interesting or difficult, nonemergency cases from other pathologists or diagnosticians worldwide" (page 141, par. 4-page 142, par. 1.) There is no notion in Fontelo of claim 1's limitations of an intermediary responding to a consultation request from a doctor by selecting a doctor to be consulted, setting up the consultation, and then making the arranged consultation between the doctors the basis for the granting of CME credit for the doctor who made the consultation request.

The Remote reference describes a telemedicine network which provides two-way interactive audio/visual communications which can be used for consultations (page 167, col. 1, second paragraph. Physicians who use the MCG system for consultations are given CME credit (page 168, col. 1, paragraph 3). The sites used for the remote consultations have facilitators which manage paperwork and videotapes, direct the

camera, and operate the equipment” (page 167, col. 1, last paragraph). Remote thus goes beyond Fontelo in disclosing that consultations may form the basis for CME credit, but it, too, fails to disclose an intermediary who receives the consultation request from a doctor, selects a doctor to be consulted, arranges the consultation, and then makes the arranged consultation the basis for the granting of the CME credit. In particular, Remote’s “facilitators” deal with non-medical matters only.

It should be pointed out here that the fact that it is the intermediary who selects the physician to be consulted, arranges the consultation, and makes the consultation the basis for certifying CME credit is more than just a design choice. Because it is the intermediary who selects the physician to be consulted and sets up the consultation, a physician who has no knowledge of the specialty or specialists to be consulted can use the method set forth in the claim to get the specialist his or her patient needs and to get CME for learning enough from the consultation to improve his or her care for the patient. Indeed, the assignee of the present application provides a service which sets up consultations for physicians practicing in Latin America with specialists in the United States and which works substantially as set forth in the claim.

Because claim 1 includes limitations which are disclosed in neither Fontelo nor Remote, Examiner has not made the *prima facie* case required for a rejection under 35 U.S.C. 103 and the claim 1 is patentable over the references. Because claim 1 is patentable over the references, so are all of the claims dependent from claim 1.

*Limitations of claim 2 which are not disclosed in Fontelo or Remote*

The additional limitations of claim 2 involve the intermediary’s staff physician retrieving “instructional material *relevant to the comment and the consultation*” and providing it to the physician who requested the consultation. As would be expected from the lack of any disclosure of an intermediary like that of claim 1 in Fontelo and Remote, there is also no disclosure of an intermediary who provides instructional material relevant to a consultation that the intermediary has arranged.

*Limitations of claims 3 and 4 which are not disclosed in Fontelo, Remote, or Galewitz*

Galewitz, Fontelo, and Remote all disclose granting CME based on instructional material received over the World Wide Web or on the basis of remote consultations, but none of them discloses the claims' "providing via the telecommunications system an examination based on at least the comment to the first physician".

*Independent patentability of claims 2-4 over the references*

Because each of these claims has additional limitations which are not disclosed in any of the references, the claims are patentable in their own rights over the references.

**Conclusion**

Applicants have demonstrated that their claims as amended are fully supported by the application as filed, have amended their claims to overcome the rejection under 35 U.S.C. 101, and have traversed the rejections under 35 U.S.C. 103. Applicants have thus been fully responsive to Examiner's non-final Office action of 1/9/2009 and have thereby satisfied the requirements of 37 C.F.R. 1.111(b). Applicants consequently respectfully request that Examiner enter the amendment and continue with her examination, as provided by 37 C.F.R. 1.111(a). The fee for a one-month extension of time accompanies this response. No other fees are believed to be required. Should any be, please charge them to deposit account number 501315. Overpayments should be credited to the same account.

Respectfully submitted,

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